

Appl. No. 10/537,245
Amdt. dated December 24, 2008
Reply to Final O.A. of October 3, 2008

REMARKS

Claims 10-14, 17, 19-31 are now in this application.

By this amendment new claim 31 has been added. Support for this added claim can be found in Figure 1, and in the specification in paragraphs [0018] and [0020].

It appears that the examiner has not rejected claims 23-27. Neither has the examiner indicated allowance of these claims. Applicant takes this as an implied indication of allowance, which is gratefully acknowledged.

Regarding the rejection of claim 10, applicant again argues that claim 10 requires the valve diaphragm (22) to have two straight edges (24,25) opposite one another. As correctly stated in the rejection, the Blaser reference lacks these straight edges. The examiner has used the Cope reference in an improper attempt to overcome this deficiency of the Blaser reference.

However, Cope deals with pressurized containers and teaches a valve for adding pressure and holding air inside a container, which is completely opposite to the operation of Blaser, and also completely opposite to the operation of the present invention. Thus the Cope reference is non-analogous art which teaches **away from the present invention**, i.e. Cope keeps air in, whereas applicant's device, and also Blaser's, are designed to let air out, and keep it out.

Further, since the tape 23 of Cope is not positioned within a holder body, the teaching of a rectangular tape by Cope is not a teaching that is applicable to the valve diaphragm sitting within a holder as recited in claim 10.

Even with these deficiencies in the examiner's rejection, claim 10 has nevertheless been amended to further specify the number of openings in the valve. Specifically, the number of

openings is critical to the fact that a plurality of openings communicate through only one indentation. A plurality of openings assures the functional reliability of the arrangement. In the presently claimed arrangement, even if one opening becomes clogged and cannot be used for pressure equalization, the other opening is still operable. By a suitable design of the indentation connecting the plurality of openings, good response performance of the valve can be attained and assured. This is a further characteristic which is not shown in any of the references, not Blaser, not Cope and not Domke.

Regarding the rejection of claims 10, 13, 17, 19, 21-22, and 28-29 as unpatentable over Blaser in view of Cope, applicants disagree with the rejection for several further reasons.

First, in the Blaser reference, there is mention of only a single opening (14), as shown in Fig. 1. This opening (14) is surrounded by concentric grooves (15), see column 3, lines 5-10. Therefore, the Blaser reference does not disclose any single indentation that connects two through openings with one another, as recited in claim 10. Because a plurality of through openings communicate with one another through an indentation in the present invention, the gas outflow is more uniform and assured than would be the case with only one through opening. Also, the Blaser reference does not show parallel side faces as required by claim 10.

Second, the Cope reference is from a different field of invention. It has nothing to do with coffee valves which allow egress of air. Quite the opposite, the valve in the Cope reference does not permit any escape of gas from the interior of the container to the outside, but rather the valve of Cope allows ingress and blocks egress. This is apparent from the direction of the arrow pointing into the interior of the container as shown in Figs. 3 and 4 of Cope.

Appl. No. 10/537,245
Amdt. dated December 24, 2008
Reply to Final O.A. of October 3, 2008

The subject matter of the present application is precisely the opposite of Cope. The present invention is specifically designed to allow the escape of gas from the interior of the package to the outside. With the valve of the Cope reference, buildup of pressure within the container is to be accomplished, not pressure reduced.

Regarding the rejection of claim 30, it is pointed out that the phrase "**consisting of**" in line 1 was specifically chosen because it limits the invention of this claim to **only two elements**, the holder body, and the valve diaphragm.

The examiner's attention is requested to MPEP 2111.03, Transitional Phrases [R-3]. This section of the MPEP defines the transitional phrases "comprising", "consisting essentially of" and "consisting of" and how they do or do not limit the scope of a claim, particularly what unrecited additional components or steps, if any, are **excluded** from the scope of the claim. According to this section of the MPEP, the transitional phrase "**consisting of**" excludes any element, step, or ingredient which is not specified **in** the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948) ("consisting of" defined as "closing the claim to the inclusion of materials other than those recited except for impurities ordinarily associated therewith.").

In opposition to claim 30 as limited by the phrase "**consisting of**", the examiner's rejection places three elements of structure into the stated rejection, the body 10, the diaphragm 20, and the clamping member 30, all from Blaser. In the rejection the examiner has indicated replacement of the diaphragm with an adhesive backed diaphragm from Cope. Thus, as specified

Appl. No. 10/537,245
Amdt. dated December 24, 2008
Reply to Final O.A. of October 3, 2008

in the rejection, the combination of references does not meet the limitations as recited in claim 30, since the combination as set forth by the examiner does not “**consist of**” only two elements of structure; instead, the combination as set forth in the rejection “**consists of**” three elements, and thus does not meet the limitations of claim 30.

The structure recited in claim 30 provides an operating valve which is limited by recitation in claim 30 to only two elements of structure. The device constructed by the examiner in his rejection provides a valve which consists of three elements. Thus, the structure constructed by the examiner in his rejection does not meet all of the limitations recited in claim 30.

Regarding the rejection of claims 11-12, 14, 18 and 20 as being unpatentable in view of Blaser, Cope and Domke, it is pointed out that the Domke reference involves a coffee valve located on the outside of the package, see Fig. 1. This contradicts claim 10 which, in lines 4-6 limits the structure to being on the inside of the package, as shown in Fig. 6 of the application.

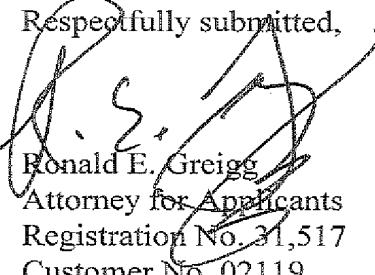
Further, the Domke reference does not show a plurality of through openings. As shown in fig. 3, the Domke reference only has a single opening (15), which is located between the wall (2) of the package and the diaphragm (19). Thus the construction as described in the Domke reference is fundamentally different from structure of the invention as recited in these claims.

Provision of two openings provides a much more reliable valve structure which is not taught by the prior art.

Appl. No. 10/537,245
Amtd. dated December 24, 2008
Reply to Final O.A. of October 3, 2008

For all of the above reasons, singly and taken together, entry of the amendment and allowance of the claims are courteously solicited.

Respectfully submitted,


Ronald E. Greigg
Attorney for Applicants
Registration No. 31,517
Customer No. 02119

GREIGG & GREIGG, P.L.L.C.
1423 Powhatan Street
Suite One
Alexandria, VA 22314

Tel. (703) 838-5500
Fax. (703) 838-5554

REG/SLS/ncr

J:\Bosch\R304187\Reply re FR of Oct 3 08.wpd